

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

LYNDON BAINES DAVIS,

Movant,

vs.

Nos. CIV 16-0728 JB/WPL
CR 99-1100 JB

UNITED STATES OF AMERICA,

Respondent.

**MEMORANDUM OPINION AND ORDER GRANTING MOTION TO WITHDRAW 28
U.S.C. § 2255 MOTION TO VACATE, SET ASIDE OR CORRECT SENTENCE AND
DISMISSING CIVIL CASE**

THIS MATTER comes before the Court on: (i) the Movant's Motion to Withdraw 28 U.S.C. § 2255 Motion to Vacate, Set Aside or Correct Sentence, filed June 30, 2016 (CIV Doc. 4; CR Doc. 69)("Motion"); and (ii) Request to Withdraw, filed July 22, 2016 (CIV Doc. 6; CR Doc. 71)("Request"). The Court will grant the Motion and Request, and dismiss civil case No. CIV 16-0728 JB/WPL.

On June 27, 2016, Movant Lyndon Baines Davis filed a Motion for Appointment of Counsel (CIV Doc. 1; CR Doc. 67)("Motion for Appointment"). Davis' Motion states that he is challenging his sentence on the grounds that it is unconstitutional under the Supreme Court of the United States of America's ruling in Johnson v. United States, 135 S. Ct. 2551 (2015). See Motion for Appointment at 1. The Court entered its Order (CIV Doc. 3; CR Doc. 68)("Order") pursuant to Castro v. United States, 540 U.S. 375 (2003), on June 30, 2016, notifying Davis that the Court intended to recharacterize his Motion for Appointment as a first 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence, and granting him leave to withdraw or amend the motion within twenty-one days. See Order at 1-2. Davis also filed his Motion to Withdraw on

June 30, 2016. See Motion at 1. Davis then filed a second request to withdraw on July 22, 2016. See Request at 1.

In his Motion, Davis requests that the Motion for Appointment “no longer be characterized as a motion pursuant to 28 U.S.C. § 2255.” Motion at 2. As stated in the Court’s Order, however, the Court has not yet characterized and, in light of the motion’s withdrawal, will not characterize, Davis’ Motion for Appointment as a first motion under 28 U.S.C. § 2255. The Court’s Order has already granted Davis leave to withdraw his Motion for Appointment. See Order at 2. Davis’ counsel represents that he has discussed this matter with Davis and that Davis wishes to withdraw his Motion for Appointment. See Motion at 1-2. On that basis, the Court will grant the Motion and will dismiss civil case No. CIV 16-0728 JB/WPL.

IT IS ORDERED that: (i) the Movant’s Motion to Withdraw 28 U.S.C. § 2255 Motion to Vacate, Set Aside or Correct Sentence, filed June 30, 2016 (CIV Doc. 4; CR Doc. 69), and Request to Withdraw, filed July 22, 2016 (CIV Doc. 6; CR Doc. 71), are granted; (ii) the Movant’s Motion for Appointment of Counsel, filed June 27, 2016 (CIV Doc. 1; CR Doc. 67), is withdrawn; (iii) the Movant’s Motion for Appointment of Counsel is not characterized as a first motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence; and (iv) civil case No. CIV 16-0728 JB/WPL is dismissed without prejudice.



UNITED STATES DISTRICT JUDGE

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